THE HON'BLE SRI JUSTICE C.V. RAMULU

Friday, the 10th day of August,2007

W.P.No.21706 of 2003

Between:-

P. Kishore Kumar … Petitioner

and

Government of Andhra Pradesh,
Rep. by its Principal Secretary,
Higher Education Department,
Secretariat, Hyderabad-22
and others … Respondents

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.21706 of 2003

ORDER:

This Writ Petition is filed seeking a Mandamus declaring the action of the 2nd respondent in rejecting the case of the petitioner and not approving the appointment of the petitioner as Librarian in 4th respondent-College by Proceedings in Rc.No.2910B/E4-3/2002, dated 23-6-2003 as arbitrary, illegal and violative of Articles 14 and 16 of the Constitution of India.

It appears, petitioner joined as an Attender in aided post in the 4th respondent-Devarasetti Adilakshmamma Women's College on 22-1-1992. He has been working in Book-keeping Section since 23-1-1994. While serving, he prosecuted further studies and acquired B.A. Degree in November,1994, B.Li.Sc. in September,1998 and Post-Graduate Degree in Library Science and also obtained M.A. Degree. Further, obtained a certificate in Computer Science (MS Office in 2001). He is a Physically Handicapped person with 65% disability. When there was a vacant post of Librarian (aided) in the 4th respondent College, the Management vide their letter dated 5-9-2001 sought permission of the Commissioner of Intermediate Education to fill up the said post. The Commission accorded permission through its Proceedings dated 4-12-2001. Further, the Management also sent a requisition to the Employment Exchange by letter dated 5-12-2001 seeking to send a list of eligible candidates for appointment to the post

of Librarian. Apart from that, the Management also invited applications from eligible candidates, by a notification in Hindu and Andhra Bhoomi on 20.12.2001. Petitioner also applied in pursuance of the said notification. The Employment Exchange also sent a list of eligible candidates on 22.12.2001. A selection committee, in terms of the Government Orders, was constituted and it met on 16-1-2002. In the said selections, the petitioner was selected. In pursuance of the same, an Order of appointment dated 19-1-2002 was issued to the petitioner appointing him as Librarian. Accordingly, he joined and working as such without any complaint. Further, the Management also addressed a letter on 24-1-2002 to the Commissioner and Director of Collegiate Education, Hyderabad seeking approval of the appointment made on 19-1-2002. The Regional Inspection Officer, Board of Intermediate Education, Kadapa seems to have forwarded the same to the Board and the Board vide its Proceedings dated 5-8-2002 rejected the proposals and did not approve the appointment on the sole ground that the College is a Women's College and only women candidates can be appointed. The Management, however, by their letters dated 16-10-2002 and 21-4-2003 appears to have resubmitted proposals and requested the Board to reconsider the issue. The Board again rejected the proposals and did not approve the appointment reiterating the earlier order, by an Order dated 23-6-2003 in Rc.No.2910B/R4-3/2002. Aggrieved by the same, the present Writ Petition is filed.

A detailed counter affidavit has been filed on behalf of the respondents denying the allegations made by the petitioner and asserting that the proposal for approval of the appointment of the petitioner was forwarded through the Regional Inspection Officer, Kadapa, vide Proceedings Rc.No.200/B/94-95, dated 25-1-2002 and after verification, the Board has rejected the proposals vide letter dated

5-8-2002, since the appointment of male candidates with less than 45 years of age in Girls' Junior College is against the existing Rules. In this regard, Rule 7 of the Rules for the post of Junior Lecturer in Government Junior Colleges as framed in G.O.Ms.No.939, Education (V) Department, dated 19-9-1973 was quoted and the same reads as under:

i) Women shall be preferred to posts in an institution specially provided for them;

ii) A vacancy in an institution specially provided for women shall be filled by transfer of a women member of the service, employed in an institution not specifically provided for women. When such transfer is not possible, any woman may be appointed by any of the methods specified in rule-3, but she shall not acquire by reason only of such appointment, any right in the matter of seniority or full members until she gets her due turn.

iii) If suitable and qualified women are not available for appointment under Rule-3, men members of this class, who are not below 45 years of age, maybe appointed for such time as suitable and qualified women become available.

It is further stated that these Rules are also applied to all the Aided Junior Colleges in the State and as per the said Rules, the petitioner's appointment is irregular and cannot be approved. Therefore, the Board has rejected the proposals sent by the Management. When the Management had sought for reconsideration, the same was also rejected. The Board is bound by the Rules, which are uniformly applied. Petitioner's claim that there is no provision prohibiting appointment of male candidates in Girls' Junior Colleges is not correct. It is the obligation of the Management to appoint female candidates in Girls' Junior Colleges for smooth functioning of the College and maintain social harmony. If female candidates are not available for appointment, then male candidates above 45 years of age alone can be appointed.

Heard both sides.

Learned counsel for the petitioner strenuously contended that the petitioner is firstly 65% physically handicapped person and secondly, he has been working in the said College, since January,1992 and the present selections have taken place on 19-1-2002. Absolutely, there are no remarks or complaints against the petitioner in the College. There is no rule, as such, prohibiting appointment of male members in Girls' Junior Colleges. Even the counter filed by the respondents would indicate that the management of the College is obligated to appoint female candidates in Girls' Junior College for smooth functioning of the College and maintain social harmony and if female candidates are not available, then male candidates above 45 years of age alone can be appointed. That seems to be only an obligation and in a case of this nature, where the petitioner is a physically handicapped person and has been working for the last more than 15 years in the same College, can be said to be of any threat for discipline and can give room for any indiscipline. In fact, G.O.Ms.No.13, dated 10-1-1992 contemplates that candidates, who have passed Post-Graduate Degree in any subject and a Degree/Diploma in Library Science shall be eligible to apply for the post of Graduate Librarian in a Junior College. Further, it is not the case of the respondents that the petitioner was not suitable nor he was appointed by back door method, for rejecting the approval of his appointment. The rules, as cited by the learned counsel for the respondents in G.O.Ms.No.939, dated 19-9-1973 speak that as far as possible, women should be preferred to posts in an institution specially provided for them. Whereas, learned counsel for the respondents reiterated the same stand taken in the impugned Orders and the counter stating that it is not desirable to appoint a male member below 45 years of age in a College

exclusively meant for women.

This is a very hard case and the petitioner has joined as an Attender in the 4th respondent-College and has been working for the last more than 15 years without any blemish. He is a physically handicapped person with 65% disability. Absolutely, there are no remarks against him, though he is working in a women's College. There is no prohibition for appointment of a male person, who is below 45 years of age, as a non-teaching staff in a College exclusively meant for women. I do not know what was the rationale behind in preferring male persons, only those who are above 45 years of age, for the post of Librarian. Even assuming that a Lecturer to be appointed shall be more than 45 years, in this case, it is the Librarian, which is not a teaching post of the College. The post of Librarian cannot be equated with that of a Lecturer – may be, the post is equated to that of a Lecturer in payment of salaries. Strictly speaking, G.O.Ms.No.939, dated 19-9-1973 is not applicable to the post of Librarian. Assuming that it has application, it is only recommendatory and not mandatory.

Learned counsel for the petitioner further stated that the said Rule is obliterated and became redundant in view of the Government contemplating introduction of sex-education in the High School and College levels. May be, this is a debatable question, but that cannot be gone into by this Court in this Writ Petition and there is no such necessity. Under these circumstances, I am of the opinion that the Order dated 23-6-2003 passed by the 2nd respondent in rejecting the approval of appointment of the petitioner as Librarian is arbitrary, irrational and liable to be set aside. It is accordingly, set aside.

The Writ Petition is accordingly allowed and the 2nd respondent is directed to consider for grant of approval for appointment of the

petitioner to the post of Librarian in the 4th respondent-College, in the light of the above findings, from the date of his appointment i.e. 19-1-2002, within a period of four weeks from the date of receipt of a copy of this Order. No order as to costs.

10-8-2007

prk